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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,636	03/15/2002	David L. Kuntz	ETS-0204	7394

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WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
1650 MARKET STREET
PHILADELPHIA, PA 19103

EXAMINER

HARRIS, CHANDA L

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 07/08/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

10/098,636

Applicant(s)

KUNTZ ET AL.

Examiner

Chanda L. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/15/02, 6/11/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 14-20 and 28 is/are rejected.
- 7) ☒ Claim(s) 7-13 and 21-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

Claim 17 is objected to because of the following informalities: Line 4: "associate" should be "associated". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 14-20, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Driscoll et al. (US 5,987,302).

1. [Claims 1,15]: Regarding Claims 1 and 15, Driscoll discloses a computer including an assessment program that relates received constructed responses to cases for assessment as an object, said cases having different states (e.g. by priority of date and time due) corresponding to the status of the cases in the assessment process, said cases further linked to the identity of the test taker who created a received response, and a scoring model (i.e. scoring guidelines) for discrete scorable classifications (e.g. based upon at least one of the time of submission of the essay response and the date an evaluation of the essay response is due to the examinee, by topic) of said cases.

See Col.3: 14-17, Col.4: 41-46, 49-65, Col.8: 40-44, Col.10: 18-19, 59-63, 65-66.

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Driscoll discloses a database that stores the cases (i.e. overall comment and pre-defined additional comments) and permits the cases to be accessed. See FIG.1-2 and Col.5: 11-20.

2. [Claims 2, 16]: Regarding Claims 2 and 16, Driscoll discloses wherein constructed responses relate to prompts, each prompt, which, in turn, relates to at least one discrete scorable classification, said discrete scorable classifications being organized by said assessment program into sets of cases that are scored similarly (e.g. by topic). See Col.10: 58-63 and Col.10: 65-Col.11:2.

3. [Claims 3-4, 17-18]: Regarding Claims 3-4 and 17-18, Driscoll discloses wherein said scoring model and said discrete scorable classifications are associated with one another and said scoring model defines business rules (i.e. rubrics) for scoring the constructed responses associated with the discrete scorable classifications associated with that scoring model and wherein the assessment program distributes the case using said business rules. See Col.4: 41-46 and Col.8: 44-46.

4. [Claims 5, 19]: Regarding Claims 5 and 19, Driscoll discloses wherein the assessment program enables an assessor to create at least one scoring record (i.e. overall comment and predefines additional comments) that is linked to a corresponding case. See Col.5: 11-20.

5. [Claims 6, 20]: Regarding Claims 6 and 20, Driscoll discloses wherein the assessment program enables an assessor to create a scoring record including at least one of a written commentary from the assessor to justify a score, a feedback

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commentary to the test taker (i.e. overall comment and pre-defined additional comments), and a customizable form of scoring data. See Col.5: 11-20.

6. [Claims 14, 28]: Regarding Claims 14 and 28, Driscoll discloses wherein said assessment program enables an administrator (i.e. reader leader) to access a case to modify the content of the case. See Col.9: 11-14.

Allowable Subject Matter

Claims 7-13 and 21-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Bejar et al. (US 6,295,439)
 - evaluation of constructed responses
- Kaplan (US 2002/0076674)
 - rapid scoring of constructed response test items
- Berman (US 6,461,166)
 - learner-constructed response based testing methodology
- Lewis (US 2003/0064354)
 - linking content standards

- Kraft (US 4,978,305)
 - free response test grading method
- Burstein et al. (US 6,115,683)
 - automatic essay scoring system
- Burstein et al. (US 6,181,909)
 - automatic essay scoring
- Jongsma et al. (US 6,267,601)
 - scoring of open-ended questions
- Foltz et al. (US 6,356,864)
 - evaluation of the semantic content of writing
- Bishop et al. (US 4,958,284)
 - open-ended question analysis

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ch.

ch.

June 24, 2003


JOHN EDMUND ROVNAK
PRIMARY EXAMINER